

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRANCESCA VIOLA,

Plaintiff,

v.

JOSHUA BENTON; PRESIDENT AND
FELLOWS OF HARVARD COLLEGE,

Defendants.

Civil Action No. 1:21-10426-LTS

**JOINT MOTION TO MODIFY SCHEDULING ORDER TO EXTEND
DISCOVERY DEADLINE FOR CERTAIN DEPOSITIONS**

Plaintiff Francesca Viola and Defendants Joshua Benton and President and Fellows of Harvard College (collectively, the “Parties”) hereby jointly request that the Court extend the deadline for fact discovery to October 31, 2022 to accommodate the depositions of three witnesses and, as a result, also modify related subsequent deadlines. In support, the Parties state as follows.

BACKGROUND

1. Under the current scheduling order, the depositions of Plaintiff and her husband, Conrad Kattner, must be completed by September 27. ECF Nos. 115, 116.
2. On August 28, Defendants received medical records from Plaintiff’s therapist, Dr. Jeannette M. Cutshaw, who treated Plaintiff from 2015 to 2022. The treatment records provided by Ms. Cutshaw did not include the period May 2018 (when Defendant Benton posted the tweets at issue in this case) through the summer of 2018. Ms. Cutshaw subsequently provided an affidavit (copy attached as “Exhibit A”) attesting that some of Plaintiff’s treatment records were accidentally destroyed. The records that were produced are primarily handwritten notes, many of which are illegible. The Parties have conferred regarding the legibility of the notes, and Plaintiff’s

counsel has stated that Plaintiff does “not have a legible or typed version” of the notes. Some of the notes produced also contain redactions about which the parties are conferring.

3. On September 15, Plaintiff produced documents in connection with the Court-ordered motion to compel forensic imaging of Viola’s computer. ECF No. 108. The vendor is assisting the Parties in obtaining the records in a searchable format. At the same time, the parties are conferring about objections asserted by Plaintiff to producing certain of the imaged records, which were produced in redacted form.

4. Because of the timing of the productions, the need to confer about the Plaintiff’s objections to producing certain records, and the illegible partial production of Ms. Cutshaw’s records, the parties jointly request that the current discovery schedule be modified as follows:

FACT DISCOVERY

A. The depositions of Plaintiff, her husband, and Ms. Cutshaw must be completed by November 11, 2022 (extended from September 27, 2022), to permit the parties to obtain the imaged documents in a searchable format, resolve issues concerning the scope of the productions prior to the depositions, and obtain Ms. Cutshaw’s testimony to supplement her partial production of treatment records.

EXPERT DISCOVERY

A. Trial experts for the party with the burden of proof must be designated and the information contemplated by Fed. R. Civ. P. 26(a)(2) must be disclosed by November 15, 2022 (extended from October 1, 2022).

B. Rebuttal experts must be designated and the information contemplated by Fed. R. Civ. P. 26(a)(2) must be disclosed by December 30, 2022 (extended from November 15, 2022).

C. All trial experts must be deposed by February 15, 2023 (extended from January 31, 2023).

DISPOSITIVE MOTIONS

Dispositive motions such as motions for summary judgment or partial summary judgment and motions for judgment on the pleadings must be filed by March 15, 2023 (extended from February 15, 2023).

WHEREFORE, the Parties respectfully request that the Court grant their Joint Motion to Modify the Scheduling Order to Extend Discovery Deadline for Certain Depositions.

Dated: September 27, 2022

FOR PLAINTIFF

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CERTIFICATE OF SERVICE

I certify that on the date listed below, I electronically filed the foregoing document with the Court using the CM/ECF system, which sent notice of the filing to all registered participants, including the following counsel:

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Dated: September 27, 2022

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